# Practical Considerations in TDS

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# Tax Deducted at Source

## ➢ TDS Overview and Its Applications

- **Tax Deducted at Source (TDS)** is a method of collecting income tax in India, under which a specified percentage of tax is deducted at the time of making certain payments such as salary, rent, interest, professional fees, commission, and more. The concept was introduced to ensure timely collection of taxes, reduce tax evasion, and ease the tax collection process for the government.

- **The primary objectives of TDS are**:
  - To collect tax at the very source of income.
  - To ensure a regular inflow of revenue to the government.
  - To minimize tax evasion by tracking income inflows.
  - To reduce the burden of lump-sum tax payments by the taxpayer.

# TDS Return Forms

| Form No. | Description | Applicability | Due Date |
|---|---|---|---|
| 24Q | TDS on Salary | Employers | Q1/2/3- Next month from Quarter End<br>Q4 – 31st May of Next FY |
| 26Q | TDS on Domestic Non-salary | Businesses/Individuals | |
| 27Q | TDS on NR Payments | Foreign Remittances | |
| 26QB | TDS on Sale of Property u/s 194IA | Buyers | 30 days from the end of the month in which TDS is deducted |
| 26QC | TDS on Rent u/s 194IB | Individuals/HUFs | |
| 26QD | TDS on Contractor or Professional u/s 194M | Individuals/HUF (No Audit) | |
| 26QE | TDS on Virtual Digital Asset (VDA) u/s 194S | Individuals/HUF (No Audit) | |
| 26QF | TDS on Virtual Digital Asset (VDA) u/s 194S | Stock Exchange | Same as 24Q |

# TDS Certificates

| Form | Certificate of | Frequency | Due date |
|---|---|---|---|
| Form 16 | TDS on salary payment | Yearly | 31st May |
| Form 16A | TDS on non-salary payments | Quarterly | 15 days from due date of filing return |
| Form 16B | TDS on sale of property | Every transaction | 15 days from due date of filing Form 26QB |
| Form 16C | TDS on rent | Every transaction | 15 days from due date of filing Form 26QC |
| Form 16D | TDS on Contractor or Professional u/s 194M | Every transaction | 15 days from due date of filing Form 26QD |
| Form 16E | TDS on Virtual Digital Asset (VDA) u/s 194S | Every transaction | 15 days from due date of filing Form 26QE |

# Budget 2025- Rationalization of TDS Rates

| Section | Current Rate | New Rates | Effective Date |
|---|---|---|---|
| Section 194H – Payment of commission or brokerage | 5% | 2% | October 1, 2024 |
| Section 194-IB – Payment of rent by certain individuals or HUF | 5% | 2% | October 1, 2024 |
| Section 194M – Payment of certain sums by certain individuals or Hindu undivided family | 5% | 2% | October 1, 2024 |
| Section 194-O – Payment of certain sums by e-commerce operator to e-commerce participant | 1% | 0.1% | October 1, 2024 |
| Section 194F – Payments on account of repurchase of units by Mutual Fund or Unit Trust of India | Omitted | — | October 1, 2024 |

# Budget 2025- Key changes in Thresholds for TDS

| Section | Before April 1, 2025 | From April 1, 2025 |
|---|---|---|
| 193 - Interest on Securities | NIL | ₹10,000 |
| 194A - Interest other than interest on securities | (i) ₹50,000 for senior citizens<br>(ii) ₹40,000 for others (banks, co-op societies, post offices)<br>(iii) ₹5,000 in other cases | (i) ₹1,00,000 for senior citizens<br>(ii) ₹50,000 for others (banks, co-op societies, post offices)<br>(iii) ₹10,000 in other cases |
| 194 - Dividend for an individual shareholder | ₹5,000 | ₹10,000 |
| 194K - Income from mutual fund units | ₹5,000 | ₹10,000 |
| 194B - Lottery, crossword puzzle winnings | Aggregate exceeding ₹10,000 in a financial year | ₹10,000 per transaction |
| 194BB - Winnings from a horse race | Aggregate exceeding ₹10,000 in a financial year | ₹10,000 per transaction |

# Budget 2025- Key changes in Thresholds for TDS

| Section | Before April 1, 2025 | From April 1, 2025 |
|---|---|---|
| 194D - Insurance commission | ₹15,000 | ₹20,000 |
| 194G - Commission, prize, etc. on lottery tickets | ₹15,000 | ₹20,000 |
| 194H - Commission or brokerage | ₹15,000 | ₹20,000 |
| 194-I - Rent | ₹2,40,000 per financial year | ₹50,000 per month |
| 194J - Professional/technical fees | ₹30,000 | ₹50,000 |
| 194LA - Enhanced compensation income | ₹2,50,000 | ₹5,00,000 |

# Whether TDS is applicable on the component of GST on Goods & Services

- **Background:**
  - GST implemented from 01.07.2017, replacing Service Tax.
  - Circular 1/2014 (re: Service Tax): No TDS on Service Tax if separately indicated.
- **Clarification**
  - **Circular 23/2017 (dated 19.07.2017**):Extends same principle to GST on services.

    TDS not applicable on GST component, if:

    1. Shown separately in invoice
    2. Payment is made to a resident service provider
    3. As per terms of contract/agreement.
  - **Circular 13/2021(dated 30.06.2021):** Clarifies on TDS u/s 194Q on GST on goods. It states that: *Accordingly w.r.t TDS u/s 194Q, when tax is deducted at the time of credit of amount in the account of seller & in terms of the agreement or contract, the* ***component of GST in the invoice to the seller is indicated separately****, tax shall be deducted u/s 194Q on the amount credited without including GST.*

# Whether TDS is applicable on reimbursement of expenses

- **Legal Standpoint:**
  - Section 4(2) & TDS Provisions (Sections 192–195)
  - TDS applies only on income chargeable to tax.
  - Reimbursements ≠ Income ⇒ Should not attract TDS.
- **Clarification**
  - **CBDT Circular No. 715, Q.30 (08.08.1995)**:TDS under Sections 194C/194J is to be made on the gross amount of the bill, including reimbursement.
- **Judicial View:**
  - Delhi High court - ***DLF Commercial Project Corporation., 379 ITR 538*** confirmed by Supreme Court [260 Taxman 1].
  - Reimbursements are not taxable in the hands of the payee if actuals are claimed.

# Section 192-Commission to Director

## ➢ TDS on commission paid to a full-time employee, reflected as part of salary in Form 16?

### ❑ Nature of Payment

- Commission paid to Managing Director who is also a full-time employee.
- Reflected as part of salary in Form 16.

### ❑ Legal Position

- The AO disallowed the expense under Section 40(a)(ia) due to non-deduction of TDS at the time of provision, claiming applicability of Section 194H (commission).

### ❑ Court Ruling

- In the case of ***Indofil Industries Ltd. [2022] 135 taxmann.com 289 (Bombay)***, the **High Court of Bombay** held that "*Where assessee-company made provision for commission and later, paid same to its Chairman and Managing Director and AO made disallowance under section 40(a)(ia) on ground that assessee failed to deduct TDS as per section 194H at time of making provision for commission, since said* ***commission was shown as part of salary in Form-16*** *for relevant assessment year, in such case section 192 would be applicable where TDS would be paid at time of payment and no disallowance could be made under section 40(a)(ia)".*

# Section 192- Payments to Medical Professionals

## ➢ Payment to doctors based on a fixed ratio- TDS u/s 192 or 194J

### ❑ Nature of Engagement

- Medical professional rendering services to **hospital**.
- Fixed Ratio- amount received for services rendered. The sharing was in the proportion of 15% vs. 85% between the hospital and the doctors.
- No evidence of employer-employee relationship with the hospital.

### ❑ Key Principles

- S.192 applies only when there is an employer-employee relationship whereas S.194J is applicable for professional services, including medical services.
- Fixed ratio payments does not imply employment.

### ❑ Court Ruling

- In the case of ***Asian Heart Institute and Research Centre (P.) Ltd [2019] 104 taxmann.com 125 (Bombay)***, the **High Court of Bombay** held that *"Assessee engaged full time consultant doctors on yearly contract, according to which **receipt from patients would be shared in certain fixed ratio** and payment made by assessee to full time consultant doctors would fall within purview of section 194J as fees for professional services, and not under section 192 as salary"*

# Section 192- TDS on Tips

## ➢ TDS on tips received by employees

### ❑ Nature of Engagement

- Under normal circumstances, salary payments arise out of an employer's obligation under the terms of employment. Tips, however, are not paid by the employer but are voluntary contributions from customers, given as a token of appreciation for services rendered.

- The employer merely acts as an intermediary or facilitator in collecting and distributing these tips and does not owe them to the employee as a matter of contractual right.

### ❑ Key Principle

- As per Section 15(b) of the Income-tax Act, a payment can be classified as "salary" only if the employee has a vested right to receive it from the employer.

- Since tips are discretionary payments made by customers, and not an enforceable claim under the employment contract, they do not fall within this definition.

- Consequently, under Section 192, which mandates TDS on salary payments, there is no liability on the employer to deduct TDS on tips, as they are not part of the employee’s salary or wages.

# Section 192- TDS on Tips

## ❑ Legal Position

- The IT Act draws a clear distinction between payments arising from an employer's contractual obligation (i.e. salary) and those that are incidental or voluntary, such as tips.
- Since tips are not paid by the employer, do not arise out of a contractual duty, and are not guaranteed or regular, they do not constitute salary income under the legal framework of Section 15.
- Moreover, the employer's role in distributing tips is fiduciary in nature, and not that of a principal making a salary payment. Therefore, TDS under Section 192 is not triggered in respect of such payments.

## ❑ Court Ruling

- This position was upheld by the Supreme Court of India in the case of ***ITC Limited [2016] 68 taxmann.com 323 (SC)***. The Court ruled that *tips collected by hotels from customers and passed on to employees do not amount to "salary" paid by the employer*. As such, the employer is not liable to deduct TDS u/s 192 on such payments.
- The Court emphasized that unless there is a ***statutory or contractual obligation on the employer to make the payment, it cannot be taxed as salary***, thereby reinforcing the distinction between salary and voluntary third-party payments like tips.

# Section 192 - Mistakes in Salary Estimation

## ➢ Mistakes in Salary Estimation - Employer can be treated as 'Assessee-in-Default'

### ❑ Background

- Employers often estimate employee income for TDS purposes. These estimates may sometimes turn out to be incorrect due to unforeseen changes (e.g., bonuses, deductions, resignations).

- The key issue: ***Whether an incorrect estimate of income while deducting TDS makes the employer an "assessee-in-default" under Section 201(1)?***

### ❑ Legal Standpoint

- Employers are **not required to act as Assessing Officers**; they are only to make a **reasonable and honest estimate** of salary.

- **TDS on salaries is based on projected income**, and an error in this estimate, if made in good faith, does not amount to default.

- The law protects employers who act fairly and diligently while estimating income for TDS purposes.

# Section 192 - Mistakes in Salary Estimation

- **AO/Revenue's Contention**
  - The employer failed to deduct the correct amount of TDS due to incorrect income estimation.
  - This failure results in the employer being **treated as an "assessee-in-default" u/s 201(1)**.
  - Even a genuine mistake in estimation was seen as a lapse in compliance.
- **Decision**
  - In the case of ***Delhi Public School [2011] 15 taxmann.com 107 (Delhi)***, **the High Court of Delhi** observed that:
    - **Incorrect income estimation alone is not sufficient** to treat the employer as an assessee-in-default.
    - There must be **evidence of dishonest or unfair conduct** on the part of the employer.
    - **Held in Favor of the assessee** (employer) – if the estimate was honest and reasonable.
    - Section 201(1) is not attracted.

# Section 192- Foreign Allowance

## ➢ TDS on Foreign Allowance Paid to Seconded Employees Not Employed by the Assessee?

### ❑ Background

- The assessee was an **Association of Persons (AOP)** formed by nine public sector oil companies.
- It operated **business abroad** and deployed **trained manpower** to foreign companies.
- These personnel were **employees of the member companies**, seconded to the AOP's overseas projects.
- The AOP paid a **foreign allowance** to these seconded personnel and claimed this expense as a deduction.

### ❑ Legal standpoint

- **Section 192**: Requires deduction of TDS on salary payments by an employer.
- **Section 40(a)(iii)**: Disallows deduction of salary paid outside India if TDS is not deducted.
- Crucial legal issue: Whether the AOP could be treated as the **employer** of the seconded personnel and thus liable to deduct TDS on the foreign allowance.

# Section 192- Foreign Allowance

## ❑ AO/Revenue's Contention

- The AOP made **salary payments** (foreign allowance) to seconded personnel.
- These payments were subject to **TDS under Section 192**.
- Since **no TDS was deducted**, the deduction was **disallowed under Section 40(a)(iii)**.

## ❑ Decision

- In the case of ***Petroleum India International [2013] 29 taxmann.com 250 (Bombay),*** **the High Court of Bombay** observed that *"**The seconded personnel remained employees of the member companies, not the AOP**. Since there **was no employer-employee relationship** between the AOP and seconded personnel, Section 192 did not apply. Consequently, Section 40(a)(iii) was not attracted, and the foreign allowance was allowed as a deduction."*

# Section 192- Salary Reimbursement

## ➢ TDS on Salary Reimbursements Made to Sister Concerns for Deputed Employees?

### ❑ Background

- The assessee was engaged in the business of **execution of contracts for erection and commissioning of plants**.
- During assessment, it was found that the assessee had **reimbursed salary expenses** to its **sister concerns** for employees deputed to the assessee's projects.
- These payments were made **without deduction of tax at source** under TDS provisions.

### ❑ Legal Standpoint

- **Section 40(a)(ia)** disallows certain business expenditures (like interest, commission, salary, etc.) - **if tax is not deducted at source** as required under the Act.
- However, **pure reimbursement of salary costs** with no profit element or extra consideration—does **not qualify as a payment attracting TDS**.
- For Section 40(a)(ia) to apply, there must be **a legal obligation to deduct tax** under Chapter XVII-B.

# Section 192- Salary Reimbursement

- **AO/Revenue's Contention**
  - The assessee made payments to sister concerns **without deducting TDS**.
  - These payments were treated as **contractual payments** requiring deduction of tax.
  - Consequently, the AO **disallowed the amount under Section 40(a)(ia)** for non-compliance.
- **Decision**
  - In the case of ***OCB Engineers [2013] 32 taxmann.com 271 (Bombay),*** **High Court of Bombay** ruled that *"The payments were pure reimbursements of actual salaries paid by sister concerns to deputed employees.* ***There was no element of profit or extra consideration involved. Since the nature of the expense was salary reimbursement, and not contractual payment, Section 40(a)(ia) was not applicable."***

# Section 194A – Reimbursement of Interest

## ➢ Is TDS under Section 194A applicable on interest reimbursed to group companies?

### ❑ Background

- Assessee is part of a group engaged in real estate development, including the construction and sale of flats and office spaces. In the normal course of business, a group entity had borrowed funds from lenders for business purposes. Subsequently, the assessee borrowed funds from these group entities and made payments termed as interest on the borrowed amount.
- However, according to the assessee, this interest payment was not in the nature of income but was merely a reimbursement of the actual interest cost incurred by the group entities in servicing their bank loans.

### ❑ Legal Standpoint

- U/s 194A, TDS on any interest (other than interest on securities) paid to a resident, provided such interest constitutes ***"income by way of interest"*** in the hands of the recipient.
- If the payment does not qualify as Income [for example, if it is a reimbursement of an actual expense] then TDS provisions do not apply.

# Section 194A – Reimbursement of Interest

❑ **AO/Revenue's Contention**

- AO held that the assessee was liable to deduct TDS u/s 194A on the interest payments made to the group entities. Accordingly, the interest paid by the assessee constituted income in the hands of the group entities, and therefore the assessee was statutorily obligated to deduct TDS.
- AO did not accept the assessee's explanation that the payments were mere reimbursements and not income.

❑ **<u>Decision</u>**

- In case of **KD Lite Developers (P.) Ltd. [2024] 169 taxmann.com 540 (Mumbai - Trib.)** ruled in favour of the assessee. The Tribunal observed that "*Where the group company of the assessee took a loan from a bank and the assessee borrowed a sum of money from its group entities and paid interest on the same, the* ***interest paid by the assessee was merely reimbursement of interest to the principal borrower*** *(i.e., the group entities) who had paid interest to the lenders".*
- On this basis, the ITAT concluded that the **interest payment was not in the nature of income** for the group entities and, therefore, the assessee was not required to deduct TDS under Section 194A.

# Section 194A –Delayed Payments

➢ **<u>Is TDS required on payments labeled as “Interest" for delayed settlement?</u>**

❑ **Background**

- The assesse had engaged in the purchase of shares through a broker. There were delays in making payments to the broker, for which the assessee paid a certain amount labeled as “Interest".
- The assessee did not deduct TDS on this payment.
- AO treated this as a payment in the nature of interest and consequently disallowed it u/s 40(a)(ia) for non-deduction of TDS under Section 194A.

❑ **Legal Standpoint**

- S. 194A mandates TDS on interest (other than securities interest) paid to a resident, provided the interest qualifies as “Income by way of interest" under Section 2(28A).

- S. 2(28A) defines interest as *"Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation), and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized”*. Thus, for a payment to qualify as “interest” under the Act, there must be a borrowing of funds or incurrence of debt.

# Section 194A –Delayed Payments

❑ **AO/Revenue's Contention**

- The AO argued that the payment made by the assessee to the broker on account of delayed payments was interest as per Section 2(28A), and hence TDS under Section 194A should have been deducted.
- Since TDS was not deducted, the AO invoked Section 40(a)(ia) to disallow the expenditure.

❑ **Decision**

- In the case of ***Standard Financial Consultants (P.) Ltd., [2024] 159 taxmann.com 1488 (Kol-Trib.)*** ITAT Kolkata ruled in favour of the assessee. The Tribunal observed that: "The payment made to the broker for **delayed settlement of share transactions was not in respect of any loan or debt incurred** in the course of business. It was **merely a compensation for delay** in making payments and not interest as defined under Section 2(28A)."

- Accordingly, the ITAT held that:
  - The payment **does not qualify as "interest**" u/s 2(28A). Therefore, Section 194A is not applicable.
  - As a result, Section 40(a)(ia) also cannot be invoked for disallowance.

# Section 194A –Retained Interest

➢ **TDS requirement when a bank purchases loans and the original owner of debt retains part of the interest as service fee?**

❑ **Background**

- A public sector bank (assessee) purchased 90% of loans from NBFCs under a direct assignment.
- The assessee agreed to take a lower interest rate on its portion.
- The remaining interest, instead of coming to the bank, was retained by the NBFCs.

❑ **Legal Standpoint**

- The bank did not borrow funds or incur debt from the NBFCs. It only purchased loans upfront.
- The retained interest by NBFCs was not a payment of interest by the bank.

❑ **Revenue's Contention**

- Since the NBFCs kept part of the interest, the bank was effectively letting them earn that interest.
- So the bank should have deducted TDS u/s 194A when "paying" that interest to the NBFCs.

❑ **Decision**

- In the case of **State Bank of India [2024] 163 taxmann.com 266 (Mumbai - Trib.):** "The **retained interest was not "interest" as defined in S. 2(28A)** (which defines interest as something paid in return for borrowing money).Therefore, the bank had no obligation to deduct TDS u/s 194A."

# Section 194A –Interest payment to NBFC

## ➢ Whether TDS is to be deducted u/s 194A on Interest payment paid to NBFC

- Section 194A of the Income Tax Act mandates that the payer must deduct a 10% tax on interest payments made to residents who are not classified as Banks, Insurance companies, or other specified exceptions.

- Interestingly, NBFCs do not fall into the exception category, which means that businesses are obligated to deduct a 10% tax on interest payments to NBFCs.

## ➢ Challenges in TDS Compliance

- One significant hurdle is the practical difficulty in deducting tax during the payment of Equated Monthly Installments (EMIs) to NBFCs.

- Payment portals may not accept payments less than the full EMI amount, making it impossible for businesses to deduct tax on the interest component of EMIs.

# Section 194A –Interest payment to NBFC

- **Probable Solution**

  - Identify Interest Component: The payer needs to examine the loan repayment schedule provided by NBFCs to identify the interest component within each EMI.
  - Calculate and Pay TDS: Once the interest component is identified, the payer can calculate TDS at the rate of 10% on this amount. They must then pay the TDS out of their own pocket.
  - Report TDS: The payer should report the TDS paid in their E-TDS returns.
  - Generate TDS Certificates: After processing the TDS Returns, the payer can generate TDS certificates (in Form 16A).
  - Apply for Refund: To recover the TDS paid out of pocket, businesses can submit a refund request letter to the NBFC.

- Until NBFCs are brought on par with banks for TDS purposes by the government, businesses will continue to face these challenges.

# Section 194C- Repair Contracts

➢ **TDS deductible on the entire contract value, including material cost, in repair contracts?**

❑ **Background**

- The assessee had entered into a contract for repairing transformers.
- The contractor was responsible for both: Supply of materials required for repair & Labour/services to carry out the repair.
- While making payments, the assessee deducted TDS only on the labour component, excluding the value of materials used by the contractor.

❑ **Legal Standpoint**

- Section 194C mandates TDS on payments to contractors/sub-contractors for carrying out any work.
- However, **CBDT Circular No. 715** and judicial precedents clarify that if the contract is composite but the value of material is separately identifiable, TDS is required only on the labour portion, not on the material cost.
- ***Key condition: Material value must be evidently segregated in the contract and billing*.**

# Section 194C-Repair Contracts

- **Revenue Contention**
  - The Department contended that the assessee under-deducted TDS by excluding the material component.
  - Argued that the contract was not separable, and hence, TDS should have been deducted on the entire payment amount.
  - Based on survey findings, the revenue treated it as default in TDS deduction.

- **Decision**
  - In the case of **Executive Engineer [2013] 35 taxmann.com 614 (Allahabad)**, the High Court held that the tribunal had righty concluded that the assessee had rightly deducted TDS only on the labour charges.
  - ***The value of materials used in repairs was specifically identifiable and billed separately***.
  - The assessee complied with legal provisions and CBDT guidance.

# Section 194C- Aircraft Landing Charges

➢ **Charges paid by international airlines to the Airport Authority of India(AAI) for landing and take-off services subject to TDS u/s 194I as rent?**

❑ **Background**

- The issue revolves around the charges paid by international airlines to AAI for aircraft landing and take-off services at the airport.
- These charges are also for parking of aircrafts and other related services at the airport, such as air traffic services, ground safety services, and aeronautical communication.
- The question raised was whether these payments are subject to TDS under Section 194-I for rent.

❑ **Legal Standpoint**

- Section 194-I of the Income-tax Act, 1961, mandates the deduction of TDS on rent paid for the use of land, building, plant, or machinery.
- The key issue is whether the charges for landing, take-off, and parking of aircraft are in substance for use of land, or if they are for other services provided by AAI, such as air traffic control, ground safety, and communication services.

# Section 194C- Aircraft Landing Charges

- **Revenue Contention**
  - The Department's view was that the charges paid by airlines to AAI should be treated as rent under Section 194-I, since they are payments related to the use of land for landing, take-off, and parking aircraft.
  - Therefore, the Department argued that TDS should have been deducted under Section 194-I on these payments.

- **Court Ruling**
  - In the case of ***Japan Airlines Co. Ltd [2015] 60 taxmann.com 71 (SC)***, the Supreme Court of India observed that **charges were not, in substance, for the use of land but for other services** required by international protocols.
  - The Court held ***that these charges were related to facilities such as air traffic services, ground safety, aeronautical communication, and other navigational services***, which AAI is required to provide.
  - Therefore, the Court ruled that Section 194-I did not apply, as the charges were not for rent as defined under the section.

# Section 194C- Bill Management Services

## ➢ Payments for bill management services - TDS u/s 194C or 194J?

### ❑ Background

- The assessee made payments for bill management services, which involved handling the processing, collection, and management of bills.

- The question arose regarding whether the payment for such services should be subject to TDS under Section 194J (professional or technical services) or Section 194C (contractual payments).

### ❑ Legal Standpoint

- Section 194J applies to payments made for professional or technical services.

- Section 194C applies to payments for contractual services, including work like bill management, which does not necessarily involve professional or technical expertise.

- The key issue is whether the services provided are professional in nature (like those requiring technical knowledge) or simply contractual services.

# Section 194C- Bill Management Services

❑ **Revenue Contention**

- The Revenue's view was that since the bill management services involved handling a series of tasks for the assessee, it should be treated as a professional service under Section 194J.

- Therefore, the Revenue contended that TDS under Section 194J should have been deducted on these payments.

❑ **Court Ruling**

- In the case of ***Executive Engineer [2015] 61 taxmann.com 414 (Karnataka)***, High Court of Karnataka ruled that the bill management services in question were not professional services but rather a service contract.

- **Since the services did not involve the exercise of professional expertise** but were more in the nature of a service contract (**handling operational tasks like billing**), the payments should be subject to TDS under Section 194C, not Section 194J.

# TDS 194C- Freight Charges Reimbursement

## ➢ TDS u/s 194C on freight charges reimbursed to a seller who arranges transportation

### ❑ Background

- The assessee (buyer) purchased goods from a seller.
- As per the terms of the sale contract, the seller was responsible for arranging transportation of goods and paying the freight charges to the goods transport agency (GTA).
- The buyer later reimbursed the freight amount to the seller.
- The assessee claimed a deduction for the reimbursed freight cost.

### ❑ Legal Standpoint

- Section 194C mandates TDS on payments to contractors, including transporters, when payment is made for carrying out any work, which includes carriage of goods.
- Section 40(a)(ia) disallows expenditure if TDS is not deducted where required.
- The key issue is whether reimbursement of freight to the seller (who paid the transporter) triggers TDS obligation under Section 194C.

# TDS 194C- Freight Charges Reimbursement

- **Revenue Contention**
  - The Revenue argued that the assessee should have deducted TDS on the freight component reimbursed to the seller.
  - It treated the reimbursement as a contract payment for transportation services under Section 194C.
  - As a result, the expenditure was disallowed under Section 40(a)(ia) for failure to deduct TDS.

- **Court Ruling**
  - In the case of ***Hightension Swithcgears (P.) Ltd. [2016] 71 taxmann.com 207 (Calcutta)*** the High Court of Calcutta held that "It was the seller who had engaged and paid the transport agency, not the assessee."
  - The **freight reimbursement was part of the sale consideration, not a separate contract for carriage.**
  - Therefore, no TDS liability arose under Section 194C on the buyer.
  - Consequently, disallowance under Section 40(a)(ia) was held to be incorrect.

# TDS 194C v. 194H - Commission to Consigning & Forwarding Agent

➢ **<u>Payment for Commission to Consigning & Forwarding Agent – 194C vs 194H</u>**

❑ **Background**

- The assessee-company, engaged in the manufacturing of automobile tyres.
- Entered into Consigning and Forwarding Agreements (CFAs) with various individuals across the country.
- These CFAs provided last-mile storage/warehousing and dispatching/forwarding services.
- The company deducted tax at source (TDS) at 2% u/s 194C for payments made to CFAs.

❑ **Legal Stand**

- Whether TDS should be deducted at the rate of 2% u/s 194C (for contractors and sub-contractors) or at 5% u/s 194H (for commission payments).
- The assessee considered the payments as compensation for services u/s 194C, whereas the Assessing Officer and CIT(A) argued that the payments were commission-based, hence subject to TDS u/s 194H.

# TDS 194Cv.194H - Commission to Consigning & Forwarding Agent

❑ **Revenue Contention**

- The AO argued that the payments made to CFAs were commission-based payments under a different nomenclature (variable service charges) and should, therefore, be subjected to TDS at 5% u/s 194H.

- The CIT(A) upheld this view, treating the assessee as an assessee in default under section 201(1) and raising a demand for the additional TDS.

❑ **Court Ruling**

- In case of ***CEAT Ltd. [2025] 173 taxmann.com 267 (Mumbai - Trib.)***, the Tribunal held that ***the services provided by CFAs were in the nature of carrying out work as per the direction of the assessee, and thus, TDS should have been deducted under section 194C.***

- Simply using the term "commission" did not automatically imply that TDS should be levied u/s 194H.

- The decision to treat the assessee as an assessee in default and to raise the demand was deemed unsustainable.

- Therefore, TDS was correctly deducted u/s 194C, and the authorities' actions were overruled.

# TDS 194C- Payment of License Fee

➢ **S. 194C apply to payment of license fee**

❑ **Background**

- The assessee was awarded a contract by IRCTC to provide catering services.
- For operating under this arrangement, the assessee paid a license fee to IRCTC.
- The Revenue authorities contended that the assessee was liable to deduct TDS under Section 194C on the license fee paid.

❑ **Legal Standpoint**

- S. 194C applies to payments made to contractors for carrying out any work (including supply of labour).
- The Tribunal clarified that s.194C applies when a person pays a contractor, i.e., the payer is the contractee and the recipient is the contractor.
- In this case, the assessee (contractor) was paying a licence fee to IRCTC (contractee), reversing the typical contractor-contractee roles.

# TDS 194C- Payment by License Fee

- **Revenue Contention**
  - The Revenue argued that the license fee formed part of the contractual arrangement for catering services.
  - Hence, they asserted that TDS under Section 194C was applicable on such payments.
- **Court Ruling**
  - In the case of ***Hakmichand D and Sons [2018] 97 taxmann.com 584 (SC)*** the Supreme Court of India was of the view that **Section 194C was not applicable, as it governs payments made to contractors, not by contractors.**
  - The payment was license fee made by the **contractor (assessee) to IRCTC (contractee),** and not for any work executed by IRCTC.
  - The Supreme Court dismissed the SLP filed by the Revenue, thereby upholding the High Court's view

# TDS 194C- Payment for Advertisement Space

➢ **Payment for advertisement space amount to a contract for work liable for TDS u/s 194C**

❑ **Background**

- The assessee-company entered into an agreement to purchase advertisement space in a local newspaper.
- The assessee exercised complete control over the ad space, with the right to either retain or resell it.
- It later sold the advertisement space to its holding company on a principal-to-principal basis.
- The Commissioner issued a notice under Section 263, questioning non-deduction of TDS under Section 194C, and proposed a disallowance under Section 40(a)(ia).

❑ **Legal Standpoint**

- Section 194C applies to payments made under a contract for work, including advertising services.
- However, contracts for sale of goods or rights (e.g., ad space with full control and resale rights) are not covered under Section 194C.
- The crucial distinction is between a contract for work (where a service is rendered) and a contract for sale (where ownership and control are transferred).

# TDS 194C- Payment for Advertisement Space

❑ **Revenue Contention**

- The Revenue argued that the purchase of ad space was a work contract, and hence, TDS under Section 194C should have been deducted.
- Consequently, they claimed the payment should be disallowed under Section 40(a)(ia) for non-compliance with TDS provisions.

❑ **Court Ruling**

- In the case of ***Times VPL Ltd. [2020] 120 taxmann.com 356 (Karnataka),*** the High Court of Karnataka held that "**The purchase of advertisement space was a contract for sale, not for work**. The assessee had complete rights over the ad space and sold it further, making it a commercial transaction between two principals."
- Therefore, Section 194C was not applicable, and no disallowance under Section 40(a)(ia) could be made.

# Section 194H -Fees Retained by E-Commerce Platforms

➢ **Service charges retained by e-commerce platforms- TDS u/s 194H**

❑ **Background**

- The assessee, was engaged in selling goods through an e-commerce platform. In the course of business, the assessee listed products on the platform.
- Upon sale, the e-commerce operator retained a portion of the sale proceeds towards service charges. The assessee did not deduct TDS under Section 194H on the amount retained by the platform.
- During assessment, the AO treated this retained portion as commission or brokerage, alleging that the assessee was liable to deduct TDS under Section 194H on such payments.

❑ **Legal Position**

- S. 194H mandates TDS on commission or brokerage, which is defined to mean any payment received or receivable, directly or indirectly, by a person acting on behalf of another for services in the course of buying or selling goods.
- In case of e-commerce platforms, the platform does not act as an agent of the seller. It does not conclude contracts, negotiate prices, or represent the seller to the buyer.
- The service charges retained are uniformly applicable to all sellers and are levied for providing platform access, logistics, and technology services and not for arranging sales on behalf of the seller.

# Section 194H -Fees Retained by E-Commerce Platforms

## ❑ Revenue's Contention

- The AO contended that the amount retained by the e-commerce platform from the gross sales proceeds amounted to commission within the meaning of Section 194H.
- According to the AO, the platform had facilitated the sale of goods on behalf of the assessee and thus acted in the capacity of an agent, making the assessee liable to deduct TDS at 5% u/s 194H on the retained amount.

## ❑ Ruling

- The ITAT Jaipur Bench, in the case of ***Nikhil Sharma [2025] 170 taxmann.com 378***, rejected the Revenue's argument and ruled in favour of the assessee.
- The Tribunal observed that: "The **amount retained by the e-commerce platform was a fee for rendering e-commerce services, and not in the nature of commission or brokerage**. There was **no principal-agent** relationship between the assessee and the platform, and the platform did not act on behalf of the assessee in buying or selling goods."
- Accordingly, it held that the conditions for applicability of Section 194H were not satisfied and therefore, no TDS was required to be deducted by the assessee on the amount retained by the platform.

# Section 194H –Fees for Payment Gateway

➢ **Fee charged by banks for payment gateway services - TDS u/s 194H as commission or brokerage**

- Section 194H mandates TDS on **commission or brokerage** payments and it applies **only** when:
  - There's a **relationship of agency**.
  - The recipient is **acting on behalf of the payer**.
  - Payment is **for facilitating sale or purchase of goods or services**.
- The amount retained by the bank is a fee charged by them for having rendered the banking services and cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods/services.
- The intention of the s. 194H is to include and treat commission or brokerage paid when a third person interacts between the seller and the buyer as an agent and thereby renders services in the course. The bank is not concerned with buying or selling of goods/services.
- In the case of **Make my Trip Ltd. [2019] 104 taxmann.com 263 (Delhi)**, **High Court of Delhi** held that "Where assessee, which was selling travel products, **paid fees to banks for providing payment gateway facility**, same could not be treated as commission or brokerage; hence, not liable to tax under section 194H."

# Section 194H -Distributor Margins

## ➢ Distributor margins - TDS u/s 194H

### ❑ Background

- The assessee (manufacturer) sold goods directly to distributors on a principal-to-principal basis.
- Distributors offered market-driven discounts to end consumers (e.g., festival offers, competitive pricing).
- The manufacturer reimbursed these discounts to distributors, often referred to as “distributor margins.”
- The distributors purchased the goods outright, and there was no agency relationship involved.

### ❑ Legal Standpoint

- S. 194H mandates TDS on commission or brokerage payments.
- Explanation to S.194H defines “commission” as a payment to a person acting on behalf of another, implying an agent-principal relationship.
- Payments between parties in a sale transaction on principal-to-principal basis are outside the scope of commission.
- Margin adjustment for resale is not a service rendered by distributor to manufacturer.

# Section 194H -Distributor Margins

- **Revenue Contention**
  - The AO treated the reimbursement of discount or margin as "commission" liable for TDS u/s 194H.
  - It argued that such margins effectively benefited the manufacturer, helping promote sales, thus constituting a service by distributor.
  - Claimed that non-deduction of TDS by the manufacturer treated assessee-in-default u/s 201.

- **Court Ruling**
  - In ***Acer India Ltd. [2019] 105 taxmann.com 125 (SC),*** the Supreme Court upheld the High Court's view:
    - **The transaction was principal-to-principal, not agency-based**.
    - **Distributors' margins were not commission – they were part of the resale structure**.
    - There was no service rendered by distributors to the manufacturer.
    - Hence, Section 194H was not attracted, and **no TDS was required** on the reimbursement of discount/margin.

# Section 194H- Franchisee/Distributor

## ➢ Income of Franchisee/Distributor from Sale of Prepaid Coupons/Starter kits- 194H

- Cellular mobile telephone service provider provides starter kits (SIM Cards) and prepaid coupons of a specified value at discounted prices to its distributors. Further, such SIM cards are sold by distributors to end users.
- The AO considered that the difference between the discounted price and the actual sale value is commission or brokerage. Accordingly, the AO contended that the assessee failed to comply with the provisions of tax deduction under section 194H.
- Explanation (i) to s.194H defines that "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities.
- Accordingly, in the case of ***Bharti Cellular Ltd. [2024] 160 taxmann.com 12 (SC)*** the **Supreme Court** held that "the assessee would not be under a legal obligation to deduct tax at source u/s 194H on the income or profit component in the payments received by the distributors or franchisees from the third parties or customers or while selling or transferring the prepaid coupons or starter-kits to the distributors."

# Section 194I- Transit Rent

## ➢ Transit rent paid by a developer/builder to a tenant - TDS u/s 194I

- The Term used " Transit Rent", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord to the tenant who suffers hardship due to dispossession.

- The relevant factor which has to be borne in mind is that section 194-I refers to 'rent'. The ordinary meaning of the word 'rent' would be an amount which the tenant/licensee pays to the landlord/licensor.

- In the case of ***Sarfaraz S. Furniturewalla v. Afshan Sharfali Ashok Kumar in High court of Bombay [2024] 166 taxmann.com 425 (Bombay)***, it was held that the **transit rent is not to be considered as revenue receipt** and is not liable to tax. As a result, there will be no question of deduction of tax at source under section 194I from the amount payable by the developer to the tenant.

# S.194IA- Payment on transfer of certain immovable property

## ❑ Background

- S.194-IA(1) provides for deduction of tax by any person responsible for paying to a resident any consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of 1% of such sum as income-tax thereon. Ss. (2) provides that no deduction of tax shall be made where the consideration for the transfer of immovable property is less than Rs. 50 lakh.

- The amended section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.

- It is further amended Ss. (2) of the said section to provide that no deduction shall be made where the consideration for the transfer of immovable property and the stamp duty value of such property, both are less than Rs. 50 Lakh.

- "*Consideration for transfer of any immovable property*" shall include all charges of the nature of club membership fees, car parking fees, electricity or water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

# S.194IA- Payment on transfer of certain immovable property

- **Issues**

1. Sale Deed Value – 60 lacs
   - Scenario 1 – 2 Buyers & 2 Sellers ?
   - Scenario 2 – 2 Buyers & 1 Seller ?
   - Scenario 3 - 1 Buyer & 2 Sellers ?

- 2. What would be the date to be put for Form 26QB filling in a scenario where there is no formal written agreement?

- 3. Whether TDS refund can be claimed in case of cancellation of agreement / deal?

# Section 194I- Common Area Maintenance (CAM) Charges

➢ **CAM charges paid as part of rent - TDS u/s 194C or 194I**

❑ **Background**

- The assessee had taken commercial space (shops) in a mall on lease. Under the lease arrangement, Rent was paid for use of the premises, and Common Area Maintenance (CAM) charges paid for shared services such as maintenance, security, and housekeeping.
- The assesses accordingly deducted TDS @ 10% on rent under Section 194-I (applicable to rent payments), and Deducted TDS @ 2% on CAM charges u/s 194C, treating them as contractual service payments.

❑ **Legal Standpoint**

- S. 194I applies to "rent", which includes payments for use of land, building, plant, machinery, etc.
- S. 194C applies to payments made under a contract for carrying out any work, including services such as maintenance, housekeeping, and security.
- The key distinction lies in whether the payment is:
  - For use of immovable property → TDS under Section 194-I, or
  - For services rendered under a contract → TDS under Section 194C.

# Section 194I- Common Area Maintenance (CAM) Charges

## ❑ AO/Revenue's Contention

- The AO contended that CAM charges were integral to the leasing arrangement, and hence, constituted a composite rent payment. Therefore, according to the AO, TDS should have been deducted at 10% under Section 194-I on the entire amount, including CAM charges.
- Disallowance under Section 40(a)(ia) was proposed for the differential TDS deducted under Section 194C.

## ❑ Decision

- The ITAT Delhi in ***Benetton India P Ltd. [2024] 167 taxmann.com 76 (Delhi - Trib.) and Diamond Tree [2025] 173 taxmann.com 764 (Delhi - Trib.)*** held that "***CAM charges are for separate and distinct services, such as maintenance of common areas, security services, and housekeeping, and do not relate to the use of land or building.*** Hence, such payments are not "rent" under Section 194-I, but **are in the nature of contractual payments** covered under Section 194C."

- As a result, TDS @ 2% under Section 194C on CAM charges was held to be appropriate and legally compliant.

# Section 194J- Payment for Interconnect usage charges

➢ **Whether Inter connect usage charges paid to the other telecom operators – TDS u/s 194J ?**

❑ **Background**

- The assessee, a telecom operator, made payment on account of interconnect usage charges (IUC) to other telecom operators for roaming services.
- The assessee argued that roaming services were fully automated without requiring human intervention.
- However, the revenue contended that human intervention was necessary for the effective provision of roaming services, which would classify the charges as "fees for technical services" under section 194J.

❑ **Legal Standpoint**

- Whether the roaming charges paid by the assessee to other telecom operators constituted "fees for technical services" u/s 194J, which mandates TDS deduction.
- The assessee argued that since the roaming services were automated and did not involve human intervention, they should not be treated as technical services.

# Section 194J- Payment for Interconnect usage charges

## ❑ AO/Revenue's Contention

- The revenue argued that the roaming services involved necessary human intervention, which made the charges subject to TDS u/s 194J. Further, the revenue also relied on various judicial precedents to support the argument that human intervention was essential in providing roaming services.
- According to the revenue, the services could not be rendered effectively without human coordination, troubleshooting, and technical expertise.

## ❑ Decision

- The ITAT Delhi in ***Tata Teleservices Ltd. [2025] 170 taxmann.com 13 (Delhi - Trib.)*** followed the decision of the Karnataka High Court in ***Vodafone South Ltd. [2016] 72 taxmann.com 347/241 Taxman 497 (Karnataka)***, which held that ***"roaming charges did not involve human intervention and were not classified as "fees for technical services" under section 194J"***.
- The court dismissed the revenue's argument, referencing the assessment in Vodafone South Ltd., where it was concluded that after the initial installation, interconnect services were automated and did not require human involvement.
- Therefore, the charges paid were not subject to TDS u/s 194J.

# Section 194-O - E-Commerce Operator Liability

➢ **Whether an agent using an E-commerce platform to book tickets is liable to deduct TDS under Section 194-O, which deals with e-commerce operators making payments to e-commerce participants?**

- Section 194-O applies to e-commerce operators who directly facilitate sales or services on an online platform using Computer Reservation System (CRS).
- Agent using the platform of E-commerce for booking tickets merely had access to the system.
- The agent is not the owner or operator of the CRS system and the agent was granted access to the CRS system via a subscriber agreement.
- In the case of ***Riya Travels and Tours(India) Pvt Ltd [2025] 172 taxmann.com 652 (Mumbai - Trib.)***, the **ITAT Mumbai** held that "Where assessee, engaged in travel services, used Computerized Reservation System (CRS) for air ticket bookings but **did not own, operate, or manage CRS platform**, section 194-O was not applicable to assesse."

# Section 194Q - TDS on Payment of Electricity Charges

- Specified buyer have to deduct TDS on purchase of goods, who is responsible for paying any sum to resident seller for purchase of any goods of the value or aggregate of the value exceeding Rs. 50 lakhs in any previous year. Buyer shall deduct an amount equal to 0.1%, at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier, on amount exceeding Rs. 50 lakhs.

- Definitions of "Goods" under various law-
  - As per Sale of Goods Act, 1930 - *'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"*

  - As per CGST 2017 - *'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"*

- From perusal of meaning of 'goods' under different statute, it can be summed as (including):
  - Movable property
  - Any Commodity
  - Non necessarily to be tangible

# Section 194Q - TDS on Payment of Electricity Charges

- Further, Hon'ble Supreme Court of India in case of ***'State of Andhra Pradesh v. NTPC Ltd. [2002] 2002 taxmann.com 2376 (SC)*** held that 'electricity' falls under the meaning of goods. Though SC was dealing with Sales Tax Act, the principles enunciated in the judgment squarely applicable for Sec 194Q also.

- Further, through S.196 of the IT Act, exception has been made on applicability of TDS provisions in case of payment being made to specified persons as follows:

*"Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to—*

*(i) the Government, or*

*(ii) the Reserve Bank of India, or*

*(iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or*

*(iv) a Mutual Fund specified under clause (23D) of section 10 ,*

*where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it."*

- Thus, it is ample clear that central/state undertakings and private companies engaged in generation and transmission of electricity is not outside the purview of Sec 194-Q.

# Section 194Q - TDS on Payment of Electricity Charges

- Further, CBDT vide its circular No. 13/2021 dated 30-06-2021 clarified that Section 194-Q will not be applicable in relation to-
  (i) Transactions in securities and commodities which are traded through recognized stock exchange or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre
  (ii) Transaction in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC.

- ***Therefore, TDS u/s 194Q will be triggered on purchase of electricity directly from companies engaged in power generation/distribution.***

# Section 194Q - TDS on Sale of Unlisted Securities

- What Qualifies as "Goods"?

  The term "goods" is not defined under the Income Tax Act. Therefore, reference is made to:
  - The Sale of Goods Act, 1930, which includes stocks and shares under "goods".
  - The Central Goods and Services Tax (CGST) Act, which excludes securities from the definition of goods.

  ***This leads to a grey area regarding unlisted shares, as they are not traded like typical commodities and fall outside the GST definition.***

- CBDT Circular No. 13/2021 — The Key Clarification

  The CBDT Circular No. 13/2021, dated June 30, 2021, clarified that Section 194Q shall not apply to:
  - Transactions in securities and commodities that are traded through recognized stock exchanges and settled by recognized clearing corporations (including those in IFSCs).
  - Transactions involving electricity and energy certificates traded on registered power exchanges.

  ***Implication: The exclusion is only for exchange-traded transactions. Therefore, off-market sales of unlisted shares are not exempt and are covered under Section 194Q.***

**Important: The obligation arises even if the transaction is a one-time deal, as long as the value crosses Rs. 50 lakhs in a year.**

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

➢ **<u>Is provider of a benefit or perquisite required to verify its taxability u/s 28(iv) before deducting TDS u/s 194R?</u>**

❑ **Legal Standpoint**

- **Section 194R** (Inserted by Finance Act, 2022; effective from 1st July 2022) mandates:
  "Any person providing to a resident any benefit or perquisite arising from business or profession shall, before providing such benefit or perquisite, ensure that TDS @10% is deducted on the value of such benefit or perquisite."

- **S. 28(iv)** defines the scope of taxability which is chargeable to income tax under the head PGBP.

❑ **Requirement of defining the taxability of the Benefit**

- The questions arises as to whether taxability of the particular is benefit/perquisite is a prerequisite for the application of S.194R as in the case of Section 195 wherein there is requirement to know whether payment made by deductor is taxable in the hands of the recipient.

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

### ❑ CBDT Clarification-Circular No. 12/2022

- The deductor under Section 194R is **NOT required** to:
  - Verify whether the benefit/perquisite is taxable in the hands of the recipient.
  - Determine under which section (e.g., 28(iv), 41(1), etc.) it is taxable.

### ❑ Conclusion

- Section 194R imposes a standalone TDS obligation.
- The deductor's responsibility ends at deducting tax;
- Taxability in the recipient's hands is not relevant for this purpose.

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

➢ **Whether reimbursement of out-of-pocket expenses incurred by service provider in the course of rendering service is benefit/perquisite?**

❑ **Clarification as per circular No. 12/2022-**

Any expenditure which is the **liability of a person carrying out business or profession**, if **met** by the **other person is in effect benefit/perquisite** provided by the second person to the first-person in the course of business/profession.

❑ **Case Study**

- Assume that Auditor is rendering service to a Company for which he is receiving Audit fee.
- In the course of rendering that service, he travel to different city from the place where is regularly carrying on profession. For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to Co..
- Ordinarily, the expenditure incurred by the consultant is part of his professional expenditure which is deductible from the fee that he receives from company.
- In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such income in computing his total income.
- Now, if this travel expenditure is met by the company, it is benefit or perquisite provided by company to the consultant.

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

| Travel/boarding/lodging exps | Invoice in Name of | Who Pays Initially | TDS under Section 194R | Remarks |
|---|---|---|---|---|
| Incurred by Auditor & reimbursed by Co. | Auditor | Auditor | ☑ TDS Applicable | Treated as benefit /perquisite to the Auditor |
| Incurred by Auditor & reimbursed by Co | Company | Auditor | ✗ TDS Not Applicable | Reimbursement of exp incurred on behalf of Co.– Not a benefit |
| Directly paid by Co | Auditor | Company | ☑ TDS Applicable | Treated as benefit /perquisite paid on behalf of the Auditor |
| Directly paid by Co | Company | Company | ✗ TDS Not Applicable | Exp is directly borne by X in its own name for services rendered to it |

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

➢ **Exception – when invoice is in the name of Service Provider (Auditor) but still Not Treated as Benefit/Perquisite**

❑ **When service provider acts as a "Pure Agent" under GST**

- A pure agent is one who:
  - Has a contractual agreement with the service recipient to act as their pure agent.
  - Does not hold title or use the goods/services procured.
  - Incurs the expense on authorization of the recipient.
  - Charges only the actual amount incurred, separately shown in invoice.
  - Supplies these goods/services in addition to their own service.

## S. 194R- TDS on benefits/perquisites provided to a resident in respect of businesses or professions.

- **Product given to a social media influencer for promotion considered a benefit or perquisite under Section 194R?**

| Scenario | TDS Applicability u/s 194R | Remarks |
|---|---|---|
| Product is **given** for promotion and **returned** after use | ✗ Not Applicable | Not treated as a benefit/perquisite |
| Product is **given** and **retained** by the influencer after promotion | ☑ Applicable @10% | Treated as a benefit/perquisite – TDS to be deducted |

# 194T- TDS on Partner's Remuneration

➢ **194T- TDS on Partner's Remuneration (Applicable from 01st April, 2025)**

**TDS RATE**

10%

**Nature of Payment to Partners**

- Salary
- Commission
- Interest on Capital
- Remuneration
- Bonus
- Interest on Loan

Threshold Limit: TDS to be deducted only in cases where aggregate payments to a partner exceeds 20,000 in a financial year.

## 194T- Challenges in Timely Deposit of TDS on Remuneration to Working Partners

- **<u>Practical Issue - Impossibility to deposit tax deducted at source in time.</u>**

- U/s 200 - TDS must be deposited within 7 days from the end of the month in which it is deducted, except for deductions in March, which must be deposited by 30th April.
- In a partnership firm, remuneration such as bonus or commission payable to a working partner is often determined based on the firm's "book profit" as defined in Explanation 3 to Section 40(b)(v). This definition requires the net profit to be computed as per Chapter IV-D, increased by any partner remuneration already deducted.
- Although firms **typically credit remuneration to a partner's account as of 31st March**, the **actual** amount is **not quantified until finalisation of accounts,** which may occur after 30th April.
- Consequently, **the firm may be unable to determine the correct TDS u/s 194T in time**, leading to late deposit and potential penal interest and disallowances.
- This **issue stems from the wording in TDS provisions requiring deduction "at the time of credit or payment, whichever is earlier,"** which creates compliance challenges when the credited amount is provisional and unquantified.

## 194T- Ambiguity in TDS Deduction on Periodic Withdrawals by Working Partners

➢ **<u>Practical Issue- Determination of character of amounts paid to a partner during the year</u>**

- During FY, a working partner may make multiple withdrawals which may be fixed monthly amounts or variable sums & may ultimately be adjusted against remuneration payable under the partnership deed.
- A key issue arises regarding the nature of such payments:
  - are these withdrawals to be treated as remuneration (salary) u/s 40(b)(v),

    Or
  - are they merely "on account" payments, pending final determination?
- Remuneration is based on the terms of the partnership deed & linked to the firm's book profit, **the final quantum of remuneration can only be determined after the close of FY & on finalization of a/cs.**

  This gives rise to ambiguity about the timing of TDS deduction:
  - Should tax be deducted at the time of each withdrawal, assuming it is salary?

    Or
  - only at year-end, once actual remuneration is determined?
- Furthermore, if TDS u/s 194T is to be deducted during the year, should it be **deposited monthly (within 7 days)** of payment, **or** only **after final remuneration is computed as per 40(b)(v)**.
- This creates practical and interpretational challenges, and may lead to compliance uncertainty and potential disputes, unless clarified by law or administrative guidance.

# Payment to Non-Resident Partner: Section 194T vs Section 195

## ➢ Case of a Non-Resident Partner

- **If the partner is a non-resident, the question arises:**
  - Should the firm deduct TDS u/s 194T or u/s195 (which specifically deals with payments to non-residents)?

- **Section 195 – A More Specific Provision**
  - Covers payments made to non-residents, including individuals and foreign companies.
  - Applies when the payment is chargeable under the provisions of the Act (except salary).
  - Requires deduction of tax at the time of credit or payment, whichever is earlier.

- **Interpretation: General vs Specific Provision**
  - Section 194T is a general provision applicable to all partners.
  - Section 195 is a specific provision dealing with payments to non-residents.

# TDS Penalty

1. Interest for Late Deduction

   1% per month or part thereof from the date tax was deductible until deduction.- Section 201(1A)

2. Interest for Late Payment

   1.5% per month or part thereof from deduction date to deposit date.

3. Disallowance for Domestic Payments

   30% of the expense amount disallowed if TDS not deducted.

4. Disallowance for Non-Resident Payments

   Entire expense amount disallowed if TDS not deducted.

- Late Filing Fee

  ₹200 per day charged until fee equals TDS amount.

- Penalty under Section 271H

  ₹10,000 to ₹1,00,000 for non-filing or incorrect filing, additional to interest.

- Prosecution

  Rigorous imprisonment from 3 months to 7 years plus fine for failure to remit TDS timely.

THANK YOU

**CA PIYUSH .S. CHHAJED**

## LETS GET CONNECTED